

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement Against:

DELORES MICHELLE LAVENDER

OAH No. 2008110155

Vocational Nurse License No.
VN 186634

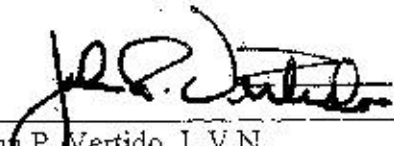
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on April 8, 2009.

IT IS SO ORDERED this 24th day of March, 2009.



John P. Vertido, L.V.N.
President

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement
By:

OAH No. 2008110155

DELORES MICHELLE LAVENDER,

Petitioner.

PROPOSED DECISION

This matter was heard by Administrative Law Judge Chris Ruiz on November 20, 2008, in Los Angeles, California.

Petitioner Delores Michelle Lavender (Petitioner or Respondent) represented herself.

Rene Judkiewicz, Deputy Attorney General, represented the Office of the Attorney General, California Department of Justice, pursuant to Government Code section 11522.

Jurisdictional documents were presented. Testimony was taken and oral argument made and the matter was submitted for decision.

FACTUAL FINDINGS

1. On December 4, 1998, the Board issued Petitioner vocational nurse license number VN 186634.

2. On February 5, 2005, Petitioner's license was revoked by default decision, because she was convicted in 2003 of possession of a controlled substance, and in 2001 of driving under the influence of alcohol. In 2001, Petitioner further failed to abstain from chemical abuse and used alcohol in a manner dangerous to her and/or the public.

3. The present Petition, filed with the Board on September 24, 2008, requests reinstatement of Petitioner's vocational nurse license.

4. Petitioner admitted that she is an alcoholic. She has been sober since October 2, 2003, and she attends group therapy which helps her remain sober. In 2003, Petitioner was sent to prison, where she remained for 18 months. Thereafter, she was placed on criminal probation, which was terminated early in September of 2008. Petitioner has attended approximately 1000 hours of alcohol/drug abuse rehabilitation training. Petitioner

has taken numerous educational classes in nursing. While Petitioner was only recently released from formal probation, she has been sober for over five years. She has also held steady employment as an auto parts store manager for the last three years. Petitioner made a good appearance on her own behalf. She was candid and she is remorseful for her past conduct.

5. Respondent established that she is sufficiently rehabilitated to order reinstatement of her license with terms and conditions which protect the public. Having Petitioner take the licensing examination, a refresher course, and issuing a probationary license which allows drug testing and medical evaluation, will adequately protect the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. The burden in a petition for reduction of an administrative penalty rests, at all times, with the petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The burden of the Petitioner herein is to establish by clear and convincing evidence that she is entitled to the requested relief.

2. Government Code section 11522 provides that a person whose license has been revoked may petition the governing agency for reinstatement, and that statute governs such petitions unless another, more specific, statute contains different provisions.

3. California Code of Regulations, title 16, section 2579.1, subdivision (b), states:

Petition for Reinstatement. When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in Section 2579 of this article.

4. California Code of Regulations, title 16, section 2579, states:

When considering the denial of a license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s)

referred to in subdivision (a) or (b).

(d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Petitioner established that she is sufficiently rehabilitated based on the reasons set forth in factual findings 1-5. However, the public will only be fully protected if such reinstatement is on a probationary basis. Government Code section 11522 provides the Board authority to reinstate a license upon appropriate "terms and conditions." Three years probation will be sufficient for the Board to verify Petitioner's continuing willingness to act in a lawful manner and to verify her ability to remain sober.

ORDER

IT IS HEREBY ORDERED that the Petition for Reinstatement of Delores Michelle Lavender is granted. A vocational nurse license shall be issued to Petitioner. Said license shall immediately be revoked, the order of revocation stayed, and Respondent shall be placed on probation for a period of three years on the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, Respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of her licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of her new address and any change in her work and/or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation, Disciplinary Decision, and this Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, the Respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the Respondent while employed as a licensed vocational nurse.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

9. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at her own expense, shall enroll and successfully complete a refresher course(s) as required by the Board. The Board shall notify Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study. Respondent must complete this education within two years.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. VIOLATION OF PROBATION

If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.

12. TAKE AND PASS LICENSURE EXAMINATION

As a condition for reinstatement of a license, Respondent shall take and pass the licensure exam, within two years, currently required of new applicants to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or any other terms of probation shall be tolled until the Respondent has successfully passed the licensure examination and notice of licensure has been mailed to the Respondent by the Board. The Respondent's failure to pass the licensure examination within two (2) years shall be considered a violation of her probationary status.

13. EXAMINATION BY A PHYSICIAN

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of her choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine Respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Board's Accusation, Disciplinary Decision, and this Decision, prior to the examination. Cost of such examination shall be paid by the Respondent.

Respondent shall cause the physician to complete a written medical report on a form provided by the Board. This report shall be submitted by the physician to the Board within ninety (90) days of the effective date of the Decision. If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board, in writing, within five (5) working days. The Board shall notify Respondent in writing of the examining physician's determination of

unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent. Respondent shall document compliance in the manner required by the Board.

14. PSYCHOLOGICAL EVALUATION

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining Respondent's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Accusation, Disciplinary Decision, and this Decision prior to the evaluation. Cost of such evaluation shall be paid by the Respondent.

If the psychological evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board, in writing, within five (5) working days. The Board shall notify Respondent in writing of the evaluator's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent. Respondent shall document compliance in the manner required by the Board. If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by the Respondent.

15. PSYCHOTHERAPY

If the psychological evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify Respondent in writing of the therapist's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent. Respondent shall document compliance with this condition in the manner required by the Board.

16. REHABILITATION PROGRAM

Within thirty (30) days of the effective date of the Decision, Respondent shall enter rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstinence from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by the Respondent.

17. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

18. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

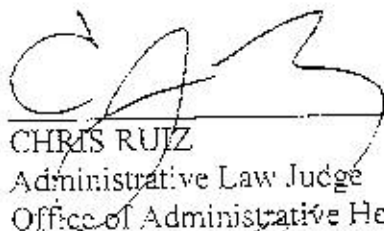
19. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

20. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results: positive test results will be immediately reported to the Board and the Respondent's current employer.

Dated: January 21, 2009.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings